

Ernest B. Wilcock, 42682
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FILED
ORIGINAL
JUL 16 2010
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Ernest B. Wilcock,
Petitioner

V.

Flathead District Court
Respondent.

Petition for Writ of
Supervisory Control (or
any appropriate writ).

Cause NO: Pending

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STATE OF MONTANA

The indigent, Forced "Pro-Se", petitioning citizen respectfully request that this Court consider the following information and issue any appropriate writ that remedies the lower Court's ongoing refusal to timely issue rulings on this citizen's actions filed in the Eleventh Judicial District Court. Of specific concern, in this instance, a Postconviction filed under cause number DV-09-1576 (A). The index of the Court record for this case is attached here as Appendix "A" and presented as the singular relevant portion of the record to support this petition.

BACKGROUND

On 12-9-2009 the Petitioner had filed a Postconviction alleging "newly discovered" information that --had it been disclosed prior to his plea-- would have allowed an affirmative defense proving "actual innocence".

Although not directly relevant to the purpose of this petitioned writ, the "newly discovered" information was in the form of information disclosed to the Petitioner by his institutional case Manager. That information was, specifically, disclosure of the **actual date** of the alleged offense in this instance. Up to the point of this recent "discovery", Counsel and the Prosecution had represented a date far removed from this "newly discovered" date. The Petitioner had a confirmable defensive alibi for the recently discovered date and had pled guilty --at his counsel's insistence|advice-- primarily for the reason that he had no provable alibi for the date represented to him at the time of the plea discussions.

At any rate, after having been shown this previously undisclosed offense date, the petitioner had his institutional case counselor **confirm** that this "newly discovered" date was in fact the actual date in the **official** case record. The institutional case counselor confirmed the date in writing and the Petitioner provided that document, and the above argument, to the lower Court as grounds for Postconviction relief.

The lower Court deemed that the claim was sufficient for a responsive pleading. The State submitted its response pleading on 3-29-2010.

It bears noting, although --and again-- not directly relevant for the purpose of **this** petition, that the State did **not** "appear by brief or argument" (citing Cameron, 2002 MT 78) in opposition to the **merits** of the claim (i.e. grossly conflicting alleged offense dates) but rested their entire argument on claiming that the Petitioner's claim did **not** constitute "newly discovered evidence" that could have proven "actual innocence" nor substantiated a Plea "contract" obtained as a result of "fraudulent" misinformation. The State went on to inform the Court that even if it did qualify (as "newly discovered"), the claim was now void since they (State) chose to destroy the only official record that they could use to counter the claim. However, they (State) provided their own generalized/vague **personal** "notes" as evidence to disqualify the claim. Curiously, the State went on to suggest that even though the Petitioner's claim is "procedurally" barred, it should **also** be denied by reason of the Petitioner's failure to provide his trial counsel's affidavit confirming misconduct (gotta add-WOW!).

Continuing. On 4-6-2010, the petitioner submitted a "reply" to the State's "responsive" pleading.

On 5-19-2010, after having received no ruling, the Petitioner notified the lower Court that the matter was available for a ruling.

ARGUMENT/ISSUE

As of this date, over ninety days have elapsed since the conclusion of litigation on the matter of the petition. The lower Court has a lengthy history of demonstrating his disdain for forced "Pro-Se" Petitioners by allowing their cases to languish unresolved for completely uncalled for, unrealistic, and unjustifiable, periods (e.g. this Petitioner's case under DP-04-0008 (A) has been awaiting a ruling since 2004, and he left another Postconvictioner recently waiting over **nine months** [!] for a ruling on a simple "procedural" motion-[see Stubbert vs. 11th District Court, 2009, filed in this Supreme Court]).

IN CLOSING

In short. It is respectfully requested that this Supreme Court take whatever steps, and issue an appropriate writ, that compels the lower Court to issue a ruling on the Postconviction at at issue here. Since this matter is not --as it now stands-- "appealable" then resolution by this Supreme Court is the Petitioner's only known recourse. *Respectfully Ernest B. Wilcock*

CERTIFICATE OF VALIDATION

This is to certify that the foregoing petition is inhrently an affidavit and that, as such, this Petitioner/affiant hereby validates its authenticity and that it is true and accurate to the best of his knowledge.

Ernest B. Wilcock

Ernest B. wilcock, Petitioner

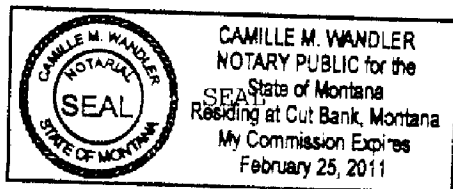
Subscribed and sworn to before me this 14 day of July, 2010.

Camille M. Wandler

Notary Public for the State of Montana

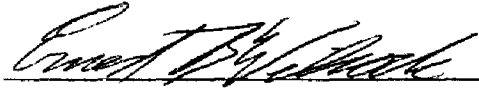
Residing at Cut Bank

My Commission expires 2-25-2011



CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing document complies with M.R.App. P. to the best of his present abilities.

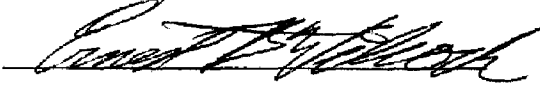


Ernest B. Wilcock, Petitioner

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the forgoing was duly served by first class mail, postage pre-paid, to the Clerk of Montana Supreme Court, Clerk of Flathead District Court, The Montana Attorney General/Flathead county Attorney.

On the 14 day of July, 2010.



Ernest B. Wilcock, Petitioner